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Subject: State of Michigan comments on ARAR provisions in Tittabawassee River Segments 4 and 5 Draft Response Proposal - Dow Chemical

**Michigan Department of Environmental Quality (DEQ) Review Comments on the Tittabawassee River
Segments 4 and 5 (OU1) Draft Response Proposal – ARARs comments
Settlement Agreement No. V-W-10-C-942 for the Tittabawassee River/Saginaw River & Bay Site
Dow Submittal Number 2014.056**

March 4, 2016

The DEQ and the Department of Attorney General are providing these comments pertaining to Section 4.3 (Applicable or Relevant and Appropriate Requirements) of the Segments 4 and 5 (OU1) Draft Response Proposal dated December 18, 2015 and submitted by the Dow Chemical Company. The comments provided below are in addition to the comments that will be provided on behalf of the State by Mr. Al Taylor to Ms. Mary Logan addressing the other sections of the Segments 4 and 5 Draft Response Proposal.

Using the Segments 4 and 5 Response Proposal prepared by Dow as a base, DEQ has identified any additions or modifications in **bold, highlighted and underlined** type, and deletions are in ~~**bold, highlighted and strikethrough**~~.

1) Sec. 4.3.1 Potential Chemical-Specific Requirements

Page 49. Introductory title. Dow included the footnote that the State recommended in comments to the Segment 3 Response Proposal; however, the last sentence of the suggested text, set forth below, was omitted from fn.7 in the Segments 4 and 5 Response Proposal. In other parts of Section 4 (pp. 45, 46) of the Segments 4 and 5 Response Proposal, the text notes that certain analyses or considerations are part of the Floodplain Response Proposal and the Task 10 RRA, and not part of this response proposal.

The State views this discussion of chemical-specific ARARs and TBCs in the Segments 4 and 5 draft response proposal as another location where reference to the Floodplain Response Proposal is appropriate, most notably because there are chemical-specific ARARs (cleanup criteria) that are applicable to bank soils for direct contact. Therefore, the State recommends revising fn. 7 to add the highlighted sentence below referencing Part 201's identification as a chemical-specific ARAR for the Floodplain Response Proposal:

- a. "4.3.1 Potential Chemical-Specific ARARs or TBCs ^{FN7}

FN7 It should be noted that any standard, requirement, criterion, or limitation under any Federal environmental law, or any promulgated standard, requirement, criterion, or limitation under a State environmental law, which contains a cleanup criterion/number for sediment or soil is not considered a chemical-specific ARAR for this response action since this response action is performance-based and is not driven by cleanup criteria/numbers. As appropriate, cleanup criteria/numbers/non-numeric criteria (e.g., under Part 201, NREPA) may be evaluated as potential chemical-specific ARARs for any future risk-based responses. Michigan's Part 201 criteria (both generic and site-specific) were identified as chemical-specific ARAR for the risk-based Tittabawassee River Floodplain Response Proposal. "

[no suggested changes for remainder of 4.3.1]

2) Sec. 4.3.2.7 Michigan Natural Resources and Environmental Protection Act (NREPA)

- a. Page 51. Hazardous Waste Management, Part 111. Dow's explanation of Part 111 adds the term "characteristic" to the description of the excavated sediment or soil that may be subject to the provisions of Part 111 as an ARAR. This term, from the Part 111 rules, was not included in the Segment 2 Response Proposal. MDEQ will not object to the proposed description of the potential application of Part 111, but it is important to note that Michigan is a fully authorized state for RCRA Subtitle C, therefore, even if Part 111 of the NREPA is not identified in this Segment 3 Response Proposal as an ARAR, the provisions of Part 111 are requirements under the Dow License. Under the AOC, Dow is using a CERCLA process to satisfy their corrective action obligations under Part 111 and as identified in the License, and so whether or not Part 111 is identified as an ARAR in the remedial process, the requirements of the state statute are part of the License obligations. In addition, Part 111 and the License identify environmental performance standards under Part 201 of the NREPA to satisfy corrective action obligations.
- b. Page 52, Michigan Administrative Code 901(a). Dow added the State's requested clarification on the citation to the rule, however, the following citation format may be more clear:

"Michigan Administrative Code Rule 901(a), was promulgated as Rule 336.1901 under Part 55 of NREPA, Air Pollution Control Michigan Administrative Code Rule 336.1901 (Rule 901) was promulgated under the authority of Part 55 (Air Pollution Control) of the NREPA, MCL 324.5501 et seq. Rule 901(a)...."

The State acknowledges that the Trustee Council comments sent by Dr. Lisa Williams on February 29, 2016 contained the comment that Part 55 of NREPA did not appear to be addressed in this draft response proposal; the State has followed up with the Trustee Council to confirm that the identification of Rule 901(a) as an ARAR provides the appropriate reference to state law.

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